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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,330	03/26/2004	Stefan Vilsmeier	SCHWP0187USA	1366
7590 12/10/2008				
Don W. Bulson RENNER, OTTO, BOISSELLE & SKLAR, LLP Nineteenth Floor 1621 Euclid Avenue Cleveland, OH 44115-2191			EXAMINER ROZANSKI, MICHAEL T	
			ART UNIT 3768	PAPER NUMBER
			MAIL DATE 12/10/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/811,330

**Applicant(s)**

VILSMEIER ET AL.

**Examiner**

MICHAEL T. ROZANSKI

**Art Unit**

3768

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-19 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-19 and 21-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

Claims 1, 19, and 24 are objected to because of the following informalities: In the last step of each claim, it is unclear whether the 'detected positions' are of the position or the patient and/or the positions of the medical treatment devices. Examiner suggests inserting the phrase --of the patient and the medical treatment devices-- or --of the medical treatment devices-- after the term "positions." Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-19, and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Hatcher et al (WO 99/59106).

Hatcher et al disclose a method and apparatus for generating 3D models from medical images. The pre-operative treatment planning software tool includes modules for creating and manipulating the 3D models for medical applications. The Sculptor module maps all acquired images (i.e. optical or x-ray) that detect a position of a patient into a database and allows the operator to identify the location of different anatomical points in each of the images, Thereby relating different anatomical points to each other

in a 3D space and also relating the points to the images (which are 2D). In addition, any medical treatment devices or treatment-assisting devices would be present in the images (pg 5, lines 8-13). For example, calibration targets 440 are considered treatment-assisting devices because they assist in the treatment planning and are visible in both optical and x-ray images (pg 18, lines 21-22). The Clinician/Consultant module then uses the related points (i.e. data linked) to modify or customize a stock model (i.e. generic 3D anatomical model). The generic model may represent the average structure of a piece of anatomy. The customized patient-specific model (i.e. patient-specific body structure data) that is created corresponds to a 3D model of the patient's anatomy (pg 5, lines 14-23).

### ***Response to Arguments***

Applicant's arguments filed 10/6/08 have been fully considered but they are not persuasive. Applicant argues that Hatcher does not disclose providing for the three dimensional generic model to be adapted in two dimensional space by data linking the three dimensional generic model with patient characteristic, two dimensional detection data. Applicant goes on to point out that Hatcher discloses creating a three dimensional patient-specific model based on acquired images and modifying a three dimensional stock model based on the created three dimensional patient-specific model. Examiner does not disagree with Applicant's assessment of Hatcher. However, the claimed language only requires that the generic model be adapted by data linking the generic model with the 2D detection data. In Hatcher, the stock (or generic) model is adapted is

based on the patient-specific model, which is based on the 2D images. Therefore, the stock model is 'data linked' to the 2D images via through use of the patient-specific model. Without further describing how the generic model is data linked to the 2D detection data in a manner that excludes the intermediate data, the claims do not distinguish over Hatcher.

In addition, the newly added claim objections have been included to expedite prosecution.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MICHAEL T. ROZANSKI** whose telephone number is (571)272-1648. The examiner can normally be reached on Monday - Friday, 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on 571-272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric F Winakur/  
Primary Examiner, Art Unit 3768

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